



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

July 2, 2008

Mr. Philip E. Kadlecek  
President  
Delfasco, Inc.  
733 W. Hurst Blvd.  
Hurst, TX 76053

Re: The Former Delfasco Forge Facility  
Grand Prairie, TX; EPA ID No. TXD988034328

Dear Mr. Kadlecek:

On July 1, 2008, Delfasco, Inc. met with the Environmental Protection Agency, Region 6 (EPA) in our Dallas, Texas offices. During the meeting, EPA informed you that the Agency intended to issue to Delfasco, an Order pursuant to Section 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6973. The Order would require the mitigation of trichloroethylene vapors affecting a number of homes adjacent to the former Delfasco Forge facility in Grand Prairie, Texas. The vapors emanate from extensive groundwater contamination which EPA believes was caused by Delfasco Forge.

During the July 1 meeting, EPA informed Delfasco of the requirements of the Order and Delfasco representatives indicated that the company was not able to enter into an order on consent. Consequently, EPA hereby issues a Unilateral Order addressing the concerns discussed in the July 1 meeting. The Order is enclosed.

EPA requests that Delfasco determine whether or not it intends to comply with this Order by 4:00 CDT July 3, 2008, and that you send your response to Steve Gilrein via email at [gilrein.stephen@epa.gov](mailto:gilrein.stephen@epa.gov) or via facsimile at (214) 665-7446. If you have technical questions regarding the Order you may call Melissa Smith at (214) 665-7357. If you have legal questions, you may call Lorraine Dixon at (214) 665-7589.

Sincerely,

A handwritten signature in black ink, appearing to read "John Blevins".

John Blevins  
Director  
Compliance Assurance  
and Enforcement Division

Enclosure  
cc: Jim Morriss, Esq.

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 25% Postconsumer)

FILED

08 JUL -2 PM 5:49

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY REGIONAL HEARING CLERK  
EPA REGION VI

IN THE MATTER OF:

**Delfasco, Inc.**  
**(Former Delfasco Forge Division**  
**TXD988034328)**

EPA DOCKET NO.  
**RCRA-06-2008-0907**

RESPONDENT

Proceeding under Section 7003 of  
the Resource Conservation and  
Recovery Act, 42 U.S.C. Section  
6900, et seq., as amended.

RCRA § 7003 UNILATERAL ADMINISTRATIVE ORDER

## TABLE OF CONTENTS

I.	INTRODUCTION.....	-1-
II.	JURISDICTION.....	-2-
III.	DEFINITIONS.....	-3-
IV.	FINDINGS OF FACT.....	-6-
V.	CONCLUSIONS OF LAW AND DETERMINATIONS.....	-9-
VI.	ORDER.....	-10-
VII.	WORK TO BE PERFORMED.....	-11-
VIII.	EPA REVIEW OF DELIVERABLES.....	-14-
IX.	MODIFICATION OF THE WORK PLANS / SAMPLING PLAN.....	-16-
X.	QUALITY ASSURANCE.....	-17-
XI.	ADMINISTRATIVE DOCUMENTATION.....	-18-
XII.	DOCUMENT CERTIFICATION.....	-19-
XIII.	SAMPLING, ACCESS, AND DATA AVAILABILITY.....	-20-
XIV.	COMPLIANCE WITH OTHER LAWS.....	-22-
XV.	RECORD RETENTION.....	-23-
XVI.	REIMBURSEMENT OF OVERSIGHT COSTS.....	-24-
XVII.	OTHER ENFORCEMENT ACTION.....	-26-
XVIII.	FORCE MAJEURE.....	-27-
XIX.	RESERVATION OF RIGHTS.....	-28-
XX.	OTHER CLAIMS.....	-29-

XXI	INSURANCE.....	-30-
XXII.	COST ESTIMATES AND FINANCIAL ASSURANCE.....	-31-
XXIII.	ADDITIONAL WORK.....	-34-
XXIV.	TERMINATION AND SATISFACTION.....	-35-
XXV.	SEVERABILITY.....	-36-
XXVI.	EFFECTIVE DATE.....	-37-
	CERTIFICATE OF SERVICE .....	-39-

## I. INTRODUCTION

1. This Unilateral Administrative Order ("UAO") is issued to protect public health and the environment by the United States Environmental Protection Agency ("EPA"). This UAO provides for the assessment and mitigation of homes affected by vapor intrusion of trichloroethylene from contaminated groundwater, as described in Section VII (Work to be Performed), including any Additional Work that may be required by Section XXIII (Additional Work) of this UAO, by Delfasco, Inc., ("Respondent") in connection with the property located at 114 NE 28<sup>th</sup> Street in Grand Prairie, Dallas County, Texas (former Delfasco Forge Division, "Delfasco site", or "Site"). In filing this UAO, the objectives of EPA are to identify, remedy, and/or prevent the potential endangerment to human health and/or the environment from hazardous constituents associated with past solid and/or hazardous waste activities at the site, and to insure that the Work ordered by EPA be designed and implemented to protect human health and/or the environment. Respondent shall finance and perform the Work in accordance with this UAO, plans, standards, specifications and schedules set forth in this UAO or developed by Respondent and approved by EPA pursuant to this UAO.
2. EPA has determined that Respondent has contributed or is contributing to the past or present handling, storage, treatment, transportation or disposal of "solid and hazardous waste" or constituents of such wastes that may present an imminent and substantial endangerment to health or the environment. Specifically, past handling of trichloroethylene at the site resulted in discharges to the environment that adversely affect the environment and human health.
3. EPA notified the State of Texas of this action pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), on June 17, 2008.

Docket Number RCRA-06-2008-0907  
RCRA 7003 Unilateral Administrative Order  
Delfasco, Inc. (TXD988034328)

## II. JURISDICTION

4. This UAO is issued to protect public health and/or the environment pursuant to Section 7003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("RCRA"), and further amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. § 6973. Section 7003(a) of RCRA authorizes the Administrator of the EPA to issue an Order whenever the Administrator receives evidence that the past or present handling, storage, treatment, transportation, or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment. The authority to issue this Order has been delegated by the Administrator of EPA to the Regional Administrator, EPA Region VI, by EPA Delegation Nos. 8-22-B and 8-22-C, dated May 11, 1994, and No. 8-23, dated March 6, 1986, and further delegated to the Director of the Compliance Assurance and Enforcement Division, Region 6 ("Director") by Delegations No. R6-8-22-A, dated July 27, 1995, and No. R6-8-23, dated July 27, 1995.
5. This UAO is issued to Delfasco, Inc., herein known as "Respondent", past or present generator and past or present operator and/or owner of the former Delfasco site located in Grand Prairie, Dallas County, Texas.

### III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this UAO that are defined in RCRA shall have the meaning assigned to them in RCRA or its implementing regulations. Whenever the terms listed below are used in this UAO the following definitions apply:

“Acceptable” shall mean that the quality of submittals or completed work is sufficient in addressing the principal components of the required submittal or work so as to warrant EPA review in order to determine whether the submittal or work meets the terms and conditions of this UAO, including all attachments, scopes of work, approved work plans and/or EPA’s written comments, and relevant guidance documents. Approval by EPA of submittals or work, however, establishes that those submittals were prepared, or work was completed, in a manner acceptable to EPA.

“Additional Work” shall mean any activity or requirement that is not expressly covered by this UAO or attachments but is determined by EPA to be necessary to fulfill the purposes of this UAO, which are to protect human health and/or the environment considering site-specific factors.

“Administrative Record” shall mean the record compiled and maintained by EPA in connection with the implementation of this UAO.

“Affected Home” shall mean a home within the residential area with an actual or calculated average TCE indoor air concentration at or above 1.2 ug/m<sup>3</sup>.

“UAO” shall mean this Unilateral Administrative Order, any amendments thereto, and any documents incorporated by reference into this UAO.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

“Comply or compliance” may be used interchangeably and shall mean completion of the work required by this Order including submittal of documents of a quality acceptable to EPA, in accordance with work plans approved by EPA and in the manner and time specified in an approved work plan, this UAO or any modification thereof. Respondent must meet both the quality (see definition of acceptable) and timeliness components of a particular requirement to be

Docket Number RCRA-06-2008-0907  
RCRA 7003 Unilateral Administrative Order  
Delfasco, Inc. (TXD988034328)

considered to be in compliance with the terms and conditions of this UAO.

“Corrective Measures” shall mean those measures or actions appropriate to prevent or mitigate the movement of hazardous constituents into indoor living spaces.

“Data Quality Objectives” shall mean those qualitative and quantitative statements derived from the outputs of a scientific and legally defensible data collection planning process.

“Day” shall mean a calendar day unless expressly stated otherwise.

“Delfasco Site” or “Site” shall mean the property located at 114 NE 28<sup>th</sup> Street, Grand Prairie, Dallas County, Texas.

“Disposal” shall mean the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste of hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

“Effective Date” shall be the date upon receipt of the signed UAO by Respondent.

“Financial Assurance” shall be the demonstration that the financial resources are available to undertake the work required under this UAO.

“Hazardous constituents” shall mean those constituents listed in Appendix VIII to 40 C.F.R. Part 261 or any constituent identified in Appendix IX to 40 C.F.R. Part 264 or any approved subset of Appendix IX to 40 C.F.R. Part 264.

“Imminent and Substantial Endangerment” shall mean that the present conditions at the affected home may present a risk or future risk of an actual, threatened, or potential harm to health or the environment.

“Owner” shall mean the person who owns a facility or part of the facility.

“RCRA” shall mean the Resource Conservation and Recovery Act (also known as the Solid Waste Disposal Act), as amended, 42 U.S.C. § 6901, *et seq.*

“Release” shall mean any spilling, leaking, pumping, pouring, emitting, emptying,



Docket Number RCRA-06-2008-0907  
RCRA 7003 Unilateral Administrative Order  
Delfasco, Inc. (TXD988034328)

discharging, injecting, escaping, seeping, leaching, dumping, placing, or disposing into the environment of any solid or hazardous waste, hazardous constituents.

“Residential Area” shall mean the homes in the residential neighborhood located directly adjacent to and northeast of the site, bounded by NE 28<sup>th</sup> Street to the west, Bowles Street to the north, Hensley Drive to the east, and E Main Street to the south, in Grand Prairie, Texas.

“Submittal” shall mean any document Respondent is required to send to EPA pursuant to this UAO, including but not limited to all the work plans, reports, and progress reports.

“Violation(s)” shall mean any actions, omissions, failures, or refusals to act by Respondent that result in a failure to meet any term or condition of this UAO.

“Work” shall mean any activity Respondent must perform to comply with the requirements of this UAO.

“Work Plan” shall mean the detailed plan(s) prepared by Respondent as required by Respondent under this UAO. All work plans and modifications or amendments thereto are incorporated into this UAO and are an enforceable part of this UAO when approved by EPA.

#### IV. FINDINGS OF FACT

7. Respondent is the current owner of the Delfasco site. Respondent operated the Delfasco Forge Division at this location from approximately 1981 to 1997. Respondent currently leases the site to an automotive repair business.
8. In April 1991, Delfasco Forge submitted a notification of hazardous waste activity indicating that it generated between 100 and 1,000 kilograms per calendar month of waste which exhibits the hazardous characteristic of ignitability (waste code D001).
9. During the time that it operated at the site, Delfasco Forge performed steel and iron forging, metal fabrication, and machining operations.
10. As part of its manufacturing process, Delfasco Forge used trichloroethylene (TCE) as a degreaser on its metal products.
11. In 2002 Delfasco began investigating potential soil and groundwater contamination associated with the site under the Texas Commission on Environmental Quality's (TCEQ's) Texas Risk Reduction Program and Voluntary Cleanup Program.
12. Soil boring data collected from the site in 2003, 2004, and 2005 indicate that a disposal and/or release of TCE occurred at the site.
13. Groundwater data collected in 2004 and 2005 in the vicinity of the site indicate that there has been a disposal and/or release of TCE to the groundwater. Concentrations of TCE in the groundwater plume are above the residential protective concentration limit (PCL) set by the TCEQ of 0.005 ug/L.
14. The TCE groundwater plume extends under approximately 65 acres of a residential neighborhood located directly adjacent to and northeast of the site, bounded by NE 28<sup>th</sup> Street to the west, Bowles Street to the north, Hensley Drive to the east, and E Main Street to the south.
15. In May 2008, EPA conducted air sampling of 16 residences and two commercial buildings within the residential area identified in Paragraph 14. The sampling event consisted of collecting and analyzing sub-slab air samples (if the home had a concrete slab foundation), collecting and analyzing crawl-space air samples (if the home had a pier and beam foundation), and collecting and analyzing indoor air samples from fifteen (15) selected homes.

Docket Number RCRA-06-2008-0907  
RCRA 7003 Unilateral Administrative Order  
Delfasco, Inc. (TXD988034328)

16. The field results obtained from the May 2008 sampling event indicate that TCE vapors from the groundwater are migrating through the soil and into the homes located above the plume.
17. As shown in the table below, the concentrations of TCE in the crawl-space, sub-slab, and/or indoor air of ten of the homes sampled using a Trace Atmospheric Gas Analyzer (TAGA) and Summa canisters exceed EPA's screening level for TCE. The screening level is based on a  $10^{-6}$  increased cancer risk for 350 days/year exposure for 30 years. (See Attachment A for Exact Addresses)<sup>1</sup>

Unit Number	TAGA Crawlspace (ug/m <sup>3</sup> )	Summa Crawlspace 1 (ug/m <sup>3</sup> )	Summa Crawlspace 2 (ug/m <sup>3</sup> )	TAGA Indoor Air (ug/m <sup>3</sup> )	Summa Indoor Air (ug/m <sup>3</sup> )	Crawlspace/ Indoor Air Screening Value (ug/m <sup>3</sup> )
Unit 3	166	130	180	134	65	1.2
Unit 6	5	3.7	n/a	3	n/a	1.2
Unit 7	0.7	1.3	n/a	0	n/a	1.2
Unit 8	29	23	42	13	7.4	1.2
Unit 9	29	21	23	3	0.61	1.2
Unit 11	2	1.7	n/a	0	n/a	1.2
Unit 12	13	30	n/a	3	n/a	1.2
Unit 13	11	9.4	2.8	3	2.4	1.2
Unit 16	70	72	74	64	22	1.2
Unit 18	107	65	n/a	n/a	n/a	1.2

18. TCE, under certain conditions of dose, duration, or extent of exposure, could constitute a threat to human health by inhalation and/or absorption. The following information was compiled from "Chemical, Physical, and Biological Properties of Compounds Present at Hazardous Waste Sites", prepared by Clement Associates, Inc., dated September 27, 1985, EPA's Integrated Risk Information System (IRIS), Clinical Toxicology of Commercial Products, Fifth Edition, and 40 C.F.R. Part 141:

**Trichloroethene:** Trichloroethylene (TCE) has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. TCE has induced hepatocellular carcinomas in mice and was mutagenic when tested using several microbial assay systems.

<sup>1</sup> Attachment A has been retained by EPA as confidential information. Attachment A will be released to Respondent within 24 hours of obtaining permission from all owners of the "Affected Homes".

Some harmful effects may persist following long-term exposure to TCE. This information is based largely on animal studies. These studies show that ingesting or breathing levels of TCE that are higher than typical background levels can produce nervous system changes and liver and kidney damage. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. The maximum contaminant level (MCL) for TCE in drinking water is 0.005 mg/l. An IRIS carcinogen assessment summary for TCE is currently not available; therefore, EPA Region 6 uses the California Environmental Protection Agency Inhalation Unit Risk value of  $2E-06$  ( $\mu\text{g}/\text{m}^3$ )<sup>-1</sup>. Under the Safe Drinking Water Act (SDWA), EPA has classified TCE as a Group B2 (probable human) carcinogen.

19. EPA Region 6 has developed the following remediation prioritization scheme for TCE:

Crawl Space/Indoor Air Concentration ( $\mu\text{g}/\text{m}^3$ )	Priority
>10	First
5 – 10	High
1.2 – 5	Site-Specific
<1.2	Low

20. The TCE concentrations in the homes identified in Paragraph 17 constitute an imminent and substantial endangerment to human health and/or the environment. Consequently, corrective action must be taken immediately to prevent continued exposure to elevated levels of TCE in the homes. Additionally, the remaining homes within the bounded area must be sampled for indoor air and corrective action taken at those additional homes that are found to have elevated indoor air TCE concentrations.

## V. CONCLUSIONS OF LAW AND DETERMINATIONS

21. Based on the Findings of Fact set forth above, and an Administrative Record supporting this UAO, EPA has determined that:
- a. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
  - b. The Delfasco site is a facility as defined by 40 C.F.R. § 260.10.
  - c. Delfasco, Inc., is the current owner of the site and the past owner/generator of solid and/or hazardous waste at the site.
  - d. TCE in the groundwater is discarded material, and thus a "solid waste" as defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27). TCE is a hazardous constituent under 40 C.F.R. Part 261. TCE is a characteristic hazardous waste at concentrations at or above 0.5 mg/L (hazardous waste code D040) and a potentially ignitable hazardous waste (hazardous waste code D001). TCE is also a listed hazardous waste when used in degreasing (hazardous waste code F001).
  - e. Respondent's past handling of TCE at the Delfasco site which resulted in TCE contamination of the groundwater in the vicinity of the site may present an imminent and substantial endangerment to human health and/or the environment within the meaning of Section 7003(a) of RCRA, 42 U.S.C. § 6973(a). Specifically, TCE vapors from the groundwater have been detected in nearby homes at concentrations which pose an imminent and substantial endangerment to human health.
  - f. Respondent has contributed and/or is contributing to groundwater release of TCE by failing to properly handle TCE in its management and past operations of its facility to prevent the release and/or disposal of hazardous waste into the environment.
  - g. The actions required by this UAO are necessary to protect human health because continued exposure to elevated concentrations of TCE can affect nervous system, kidney, and liver function, and can have possible carcinogenic effects.

Docket Number RCRA-06-2008-0907  
RCRA 7003 Unilateral Administrative Order  
Delfasco, Inc. (TXD988034328)

## **VI. ORDER**

22. Based upon the administrative record for the Site and the Findings of Fact (Section IV) and Conclusions of Law and Determinations (Section V) set forth above, the following is hereby ordered. Respondent shall comply with all provisions of this UAO, including, but not limited to, all appendices to this UAO and all documents incorporated by reference into this UAO.
23. Respondent shall finance and perform the Work in accordance with this UAO, plans, standards, specifications and schedules set forth in this UAO or developed by Respondent and approved by EPA pursuant to this UAO.

Docket Number RCRA-06-2008-0907  
RCRA 7003 Unilateral Administrative Order  
Delfasco, Inc. (TXD988034328)

## VII. WORK TO BE PERFORMED

24. Respondent shall notify EPA in writing within three (3) days of the Effective Date of this UAO of the name, address, phone number, electronic mail address, and qualifications of its Project Manager. The EPA Project Manager will be:

Richard Ehrhart (6PD-C)  
U.S. EPA Region 6  
RCRA Program Branch  
1445 Ross Avenue  
Dallas, Texas 75202  
214-665-6765  
[Ehrhart.richard@epa.gov](mailto:Ehrhart.richard@epa.gov)

The EPA Enforcement Officer will be:

Melissa Smith (6EN-HC)  
U.S. EPA Region 6  
Hazardous Waste Enforcement Branch  
1445 Ross Avenue  
Dallas, Texas 75202  
214-665-7357  
[Smith.melissa@epa.gov](mailto:Smith.melissa@epa.gov)

Each Project Manager shall be responsible for overseeing the implementation of this UAO. EPA and Respondent have the right to change their respective Project Managers. The other party must be notified in writing at least 10 days prior to the change.

25. Respondent shall ensure that its Project Manager (original or replacement) has the ability and qualifications to effectively perform this role. All persons under the direction and supervision of Respondent's Project Manager must possess all necessary professional licenses required by federal and State law.
26. The EPA Project Manager shall be EPA's designated representative for the Site. Unless otherwise provided in this UAO, all reports, correspondence, notices, or other submittals relating to or required under this UAO shall be in writing and shall be sent to the EPA Project Manager and Enforcement Officer at the addresses specified in Paragraph 24, unless notice is given in writing to Respondent of a change in address. Reports, correspondence, notices or other submittals shall be delivered by U.S. Postal Service, private courier service or electronic mail. All correspondence shall include a reference to

the case caption EPA Docket No. RCRA-06-2008-0907.

27. Respondent shall undertake and complete all of the Work to the satisfaction of EPA, pursuant to RCRA § 7003, 42 U.S.C. § 6973. All of the Work performed under this UAO shall be under the direction and supervision of Respondent's Project Manager and shall be in accordance with the terms of this UAO. Within 10 days of the Effective Date of this UAO, Respondent shall notify EPA in writing of the names, titles and qualifications of the personnel, including agents, contractors, subcontractors, consultants and laboratories, to be used in carrying out the Work.
28. Respondent's obligation to perform the Work will begin on the Effective Date of this UAO.
29. The Work undertaken pursuant to this UAO shall be conducted in compliance with all applicable EPA guidances, policies and procedures, and with this UAO.
30. Within 7 days of the Effective Date of this UAO, Respondent shall submit a Work Plan for installation of mitigation systems in the Affected Homes identified in Paragraph 17 according to the prioritization scheme in Paragraph 19. The Work Plan shall include:
  - a) A plan for obtaining access agreements from the homeowners;
  - b) A detailed description of the mitigation system to be installed specific to each home's foundation type;
  - c) A detailed description of the installation process for each system;
  - d) A description of maintenance requirements for the mitigation system(s);
  - e) An estimate of the annual operating cost for the mitigation system(s).
31. The Work Plan shall include a schedule of the Work to be performed. The Work Plan shall be submitted to EPA for approval. Following EPA's approval or modification of the Work Plan pursuant to Paragraph 39, Respondent shall immediately implement the Work Plan in accordance with the schedule and provisions approved by EPA to install mitigation systems in the known affected homes.
32. Within 30 days of the Effective Date of this UAO, Respondent shall submit a Sampling Plan for delineating Affected Homes in the Residential Area. Sampling of the homes shall include sub-slab or crawl-space samples collected concurrently with indoor air samples. The Sampling Plan shall include:
  - a) A plan for identifying homes to be sampled and determining the homes' foundation type;



Docket Number RCRA-06-2008-0907  
RCRA 7003 Unilateral Administrative Order  
Delfasco, Inc. (TXD988034328)

- b) A plan for obtaining access agreements from the homeowners; and
  - c) A detailed description of the sampling and analytical procedures to be used for sub-slab, crawl-space, and indoor air, including a process for clearing homes of other potential sources prior to sampling.
33. The Sampling Plan shall include a schedule of the Work to be performed. The Sampling Plan shall be submitted to EPA for approval. Following EPA's approval or modification of the Sampling Plan pursuant to Paragraph 39, Respondent shall implement the Sampling Plan in accordance with the schedule and provisions approved by EPA.
34. Within 7 days of receipt of sample results, Respondent shall provide a copy of those results to EPA. Data shall be validated by Respondent within 30 days of receipt of the data, and EPA shall be notified of the results of the validation within 7 days.
35. Within 30 days of receipt of the sample results, Respondent shall provide to EPA a Work Plan (using the same guidelines as identified in Paragraph 30), along with a schedule for installation, for mitigation systems to be installed in additional Affected Homes. Following EPA's approval or modification of the Work Plan and schedule pursuant to Paragraph 39, Respondent shall implement the Work Plan in accordance with the schedule and provisions approved by EPA.
36. Respondent shall ensure that the mitigation systems are maintained and operating properly until the TCE concentration in groundwater is shown to be at or below levels which pose a threat to human health.
37. Respondent shall conduct a complete groundwater/soil investigation and remediation, subject to EPA approval.

### VIII. EPA REVIEW OF DELIVERABLES

38. Deliverables required by this UAO shall be submitted to the EPA Project Manager and Enforcement Officer. All deliverables must be received at EPA by the due date specified in this UAO or by schedules developed pursuant to this UAO.
39. After review of any deliverable that is required pursuant to this UAO, EPA will: (a) give approval to proceed with the work, in whole or in part; (b) give approval to proceed with the work with specified conditions; (c) modify the submission to cure the deficiencies; or (d) direct that Respondent modify the submission. EPA will not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within seven (7) days, except where EPA determines that to do so would cause serious disruption to the Work or where EPA has disapproved previous submission(s) due to material defects and EPA determines that the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.
40. In the event of approval to proceed, approval to proceed upon conditions, or modification by EPA, Respondent shall proceed to take any action required by the deliverable.
41. Upon receipt of a notice of disapproval, in whole or in part, Respondent shall, within three (3) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval.
42. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 39, Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for penalties for the deficient portion of the deliverable under Section XVII (Other Enforcement Action).
43. In the event that a resubmitted deliverable, or portion thereof, is disapproved by EPA, EPA may again require Respondent to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Respondent shall implement any action as required in a deliverable which has been modified or developed by EPA.
44. If upon resubmission, a deliverable is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such deliverable timely and adequately. The provisions of Section XVII (Other Enforcement Action) shall govern the implementation of the Work and accrual and payment of any penalties.

Docket Number RCRA-06-2008-0907  
RCRA 7003 Unilateral Administrative Order  
Delfasco, Inc. (TXD988034328)

45. All deliverables required to be submitted to EPA under this UAO shall, upon approval or modification by EPA, be incorporated into and be enforceable under this UAO. In the event EPA approves or modifies a portion of a deliverable required to be submitted to EPA under this UAO, the approved or modified portion shall be enforceable under this UAO.

#### **IX. MODIFICATION OF THE WORK PLANS / SAMPLING PLAN**

46. If at any time during the implementation of the Work, Respondent identifies a need for a compliance date modification or revision of the Work Plan and/or Sampling Plan, Respondent shall submit a memorandum documenting the need for the modification or revision to the EPA Project Manager. EPA in its discretion will determine if the modification or revision is warranted and may provide written approval or disapproval. Any approved compliance date or Work Plan / Sampling Plan modification is incorporated by reference into this UAO.
47. Emergency Response. In the event of any action or occurrence during the performance of the Work that constitutes an emergency situation or may present an immediate threat to human health and the environment, Respondent shall immediately take all appropriate action to minimize such emergency or threat, and shall immediately notify the EPA's Project Manager. Respondent shall take such immediate and appropriate actions in consultation with EPA's Project Manager. Respondent shall then submit to EPA written notification of such emergency or threat at the Site within three (3) days of such discovery. Respondent shall thereafter submit to EPA for approval, within five (5) days, a plan to mitigate this threat. EPA will approve or modify this plan, and Respondent shall implement this plan as approved or modified by EPA. In the case of an extreme emergency, Respondent may act as it deems appropriate, at its own risk, to protect human health or the environment.

## **X. QUALITY ASSURANCE**

48. As part of the Sampling Plan, Respondent shall include a Quality Assurance Project Plan (QAPP). The QAPP shall address quality assurance, quality control, and chain of custody procedures for all sampling, monitoring and analytical activities. Respondent shall follow "EPA Requirements for Quality Assurance Project Plans" (QA/R5), (EPA/240/B-01/003, March 2001), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/b-01/002, March 2001) as well as other applicable documents identified by EPA. The QAPP shall be incorporated into this UAO by reference.
49. As part of the Sampling Plan, Respondent shall include Data Quality Objectives for any data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use as required by this UAO.
50. Respondent shall ensure that laboratories used by Respondent for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste (SW-846)" or other methods approved by EPA. If methods other than EPA methods are to be used, Respondent shall specify all such protocols in the applicable Sampling Plan. EPA may reject any data that does not meet the requirements of the approved Sampling Plan and EPA analytical methods and may require resampling and additional analysis.
51. Respondent shall ensure that all laboratories it uses for analyses participate in a quality assurance/quality control (QA/QC) program equivalent to the program that EPA follows. Respondent shall, upon EPA's request, make arrangements for EPA to conduct a performance and QA/QC audit of the laboratories chosen by Respondent, whether before, during, or after sample analyses. Upon EPA's request, Respondent shall have its laboratories perform analyses of samples provided by EPA to demonstrate laboratory QA/QC and performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC, Respondent shall submit a plan to address the deficiencies and EPA may require resampling and additional analysis.
52. EPA reserves the right to require a change in laboratories for reasons which may include, but shall not be limited to, QA/QC, performance, conflict of interest, or confidential agency audit information. In the event EPA requires a laboratory change, Respondent shall propose two alternative laboratories within 30 calendar days. Once EPA approves of the laboratory change, Respondent shall ensure that laboratory service shall be made available within 15 calendar days.

Docket Number RCRA-06-2008-0907  
RCRA 7003 Unilateral Administrative Order  
Delfasco, Inc. (TXD988034328)

#### **XI. ADMINISTRATIVE DOCUMENTATION**

53. EPA retains the responsibility for the issuance of any decision documents related to the Site.
54. EPA will provide Respondent with copies of all decision documents for the Site.
55. EPA will determine the contents of the Administrative Record file for selection of the remedial action. Respondents shall submit to EPA documents developed during the course of performing the Work upon which selection of the response action may be based. EPA will maintain an administrative record file.
56. The administrative record supporting this UAO and the Work to be performed shall be available through the Freedom of Information Act (FOIA) for public examination at the Region 6 offices, 1445 Ross Avenue, Dallas, Texas, during normal business hours, Monday through Friday.

Docket Number RCRA-06-2008-0907  
RCRA 7003 Unilateral Administrative Order  
Delfasco, Inc. (TXD988034328)

## **XII. DOCUMENT CERTIFICATION**

57. Any report or other document submitted by Respondent pursuant to this UAO which makes recommendations as to whether or not further actions are necessary, or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this UAO shall be certified by a responsible corporate officer of Respondent. A responsible corporate officer means: a president, secretary, treasurer, or vice-president in charge of a principal business function, or any other person who performs similar policy or decision-making functions.

58. The certification required by Paragraph 57 above, shall be in the following form:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

### **XIII. SAMPLING, ACCESS, AND DATA AVAILABILITY**

59. All results of sampling, testing, modeling or other data generated (including raw data if requested) by Respondent, or on Respondent's behalf, during implementation of this UAO shall be submitted to EPA within 7 days of Respondent's receipt of the data. Validation of the data by Respondent will be completed and submitted to EPA within 30 days of Respondent's receipt of the data. EPA will make available to Respondent data generated by EPA for the purposes of oversight of the Work unless it is exempt from disclosure by any federal or state law or regulation.
60. Respondent shall orally notify EPA at least 30 days prior to conducting field sampling. At EPA's request, Respondent shall allow split or duplicate samples to be taken by EPA or EPA's representative.
61. Access. Where action under this UAO is to be performed in areas owned by, or in possession of, someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 24 hours of approval of the Work Plan. Any such access agreement shall provide for access by EPA and its representatives to move freely in order to conduct actions that EPA determines to be necessary. The access agreement shall specify that Respondent is not EPA's representative with respect to any liabilities associated with activities to be performed. Respondent shall provide EPA's Project Manager with copies of any access agreements. Respondent shall immediately notify EPA if after using Respondent's best efforts it is unable to obtain such agreements within the time required. Best efforts as used in this paragraph shall include, at a minimum, a certified letter from Respondent to the present owner of such property requesting access agreements to permit Respondent, Respondent's representative, EPA, and EPA's authorized representatives to enter such property. Respondent shall, within 24 hours of its receipt of a denial of access, submit in writing, a description of its efforts to obtain access. EPA may, at its discretion, assist Respondent in obtaining access. In the event EPA obtains access, Respondent shall undertake the Work on such property and Respondent shall reimburse EPA for all costs and attorney fees incurred by the United States in obtaining such access.



Docket Number RCRA-06-2008-0907  
RCRA 7003 Unilateral Administrative Order  
Delfasco, Inc. (TXD988034328)

62. Confidential Business Information. Respondent may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this UAO under 40 CFR § 2.203 in the manner described at 40 CFR §§ 2.203(b) and substantiated with the information described at 40 CFR 2.204(e)(4). Information EPA determines is confidential will be given the protection specified in 40 CFR Part 2. If no such claim or substantiation accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the state without further notice to Respondent.
63. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege in lieu of providing documents, Respondent shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the author's name and title; (4) the name and title of each addressee and recipient; (5) a description of the contents; and (6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this UAO shall be withheld on the grounds that they are privileged.
64. All data, information, and records created or maintained relating to any Solid or Hazardous Waste found at the Site shall be made available to EPA upon request unless Respondent asserts a claim that such documents are legally privileged from disclosure. Respondent shall have the burden of demonstrating to EPA by clear and convincing evidence that such privilege exists.
65. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.
66. Nothing in this UAO shall be construed to limit EPA's right of access, entry, inspection, and information gathering pursuant to applicable law, including but not limited to RCRA and CERCLA.

Docket Number RCRA-06-2008-0907  
RCRA 7003 Unilateral Administrative Order  
Delfasco, Inc. (TXD988034328)

#### **XIV. COMPLIANCE WITH OTHER LAWS**

67. Respondent shall perform all actions required pursuant to this UAO in accordance with all applicable local, state, and federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations in a timely manner so as not to delay the Work required by this UAO.

#### **XV. RECORD RETENTION**

68. Respondent shall preserve all documents and information, including raw data, relating to the Work performed under this UAO, or relating to any solid waste or hazardous waste found at the Site, for 10 years following completion of the Work required by this UAO.
69. Respondent shall acquire and retain copies of all documents that relate to the Site that are in the possession of its employees, agents, accountants, contractors or attorneys.
70. Respondent shall make available to EPA all employees and persons, including contractors, who engage in activities under this UAO and ensure their cooperation with EPA with respect to this UAO.
71. After the 10 year retention period and 90 days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies (at no extra cost) of such documents and information to EPA. Notification shall be in writing and shall reference the effective date, caption, and docket number of this UAO and shall be addressed to the Associate Director of the Hazardous Waste Enforcement Branch, EPA Region 6, 1445 Ross Avenue, Dallas, Texas, 75202-2733. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the 10 year retention period at the written request of EPA.
72. All documents pertaining to this UAO shall be stored by Respondent in a centralized location at the Site, or an alternative location mutually approved by Respondent and EPA, to promote easy access by EPA or its representatives.

## **XVI. REIMBURSEMENT OF OVERSIGHT COSTS**

73. EPA may seek any costs as part of this UAO or any future costs from Respondents, including Oversight costs. Oversight costs shall mean costs that EPA incurs in monitoring and supervising Respondent's performance of the Work to determine whether such performance is consistent with the requirements of this UAO, including costs incurred in reviewing plans, reports, and other documents submitted pursuant to this UAO, as well as costs incurred in overseeing implementation of the work.

74. Respondent shall pay EPA for oversight costs associated with the implementation and execution of this UAO, in the following manner:

A. Upon EPA's written request, Respondent shall pay such costs pursuant to a reasonable payment schedule as agreed between EPA and Respondent. On a biannual basis, EPA will send Respondent a bill requiring payment that includes a standard regionally prepared cost summary.

B. Payments for all EPA oversight costs shall be made by certified check, company check, electronic funds transfer, or cashier's check payable to the Treasurer of the United States within thirty (30) days of Respondent's receipt of EPA's request, and shall be submitted to the following address:

Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

C. Docket No. RCRA-06-2008-0907 shall be clearly typed on the check to ensure proper credit. Respondent shall send simultaneous notices of such payments, including copies of the certified check, company check, electronic funds transfer, or cashier's check to the following:

Mr. Mark Hansen, Associate Director  
Hazardous Waste Enforcement Branch (6EN-H)  
Compliance Assurance and Enforcement Division  
U.S. EPA, Region 6  
1445 Ross Avenue  
Dallas, TX 75202-2733

Docket Number RCRA-06-2008-0907  
RCRA 7003 Unilateral Administrative Order  
Delfasco, Inc. (TXD988034328)

D. If EPA does not receive payment within thirty (30) days of Respondent's receipt of EPA's request for oversight costs, interest shall accrue at the Current Value of Funds Rate established by the Secretary of the Treasury.

Docket Number RCRA-06-2008-0907  
RCRA 7003 Unilateral Administrative Order  
Delfasco, Inc. (TXD988034328)

#### **XVII. OTHER ENFORCEMENT ACTION**

75. Failure or refusal to carry out the terms of this UAO in a manner deemed satisfactory to the EPA may subject Respondent's to a civil penalty enforcement action in an amount not to exceed \$5,500 for each day of noncompliance with this UAO, in accordance with Section 7003(b) of RCRA, 42 U.S.C. § 6973(b).

### **XVIII. FORCE MAJEURE**

76. Respondent shall perform all requirements under this UAO within the time limits established under this UAO, unless the performance is delayed by a force majeure. For purposes of this UAO, a force majeure is defined as any event arising from causes beyond the anticipation or control of Respondent, including but not limited to acts of nature (e.g. greater than 100 year rain events, floods) and acts of people (e.g. riots, strikes, terrorism), directive, or industry-wide request by any government or governmental authority or government rule that delays or prevents performance of any obligation under this UAO despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the Work or increased cost of performance or any changes Respondent's business or economic circumstances.
77. If any event occurs or has occurred that may delay the performance of any obligation under this UAO, whether or not caused by a force majeure event, Respondent shall orally notify EPA within 48 hours of when Respondent knew or should have known that the event might cause a delay. Such notice shall: (1) identify the event causing the delay, or anticipated to cause delay, and the anticipated duration of the delay; (2) provide Respondent's rationale for attributing such delay to a force majeure event; (3) state the measures taken or to be taken to prevent or minimize the delay; (4) estimate the timetable for implementation of those measures; and (5) state whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or the environment. Respondent shall undertake best efforts to avoid and minimize the delay. Failure to comply with the notice provision of this paragraph and to undertake best efforts to avoid and minimize the delay shall waive any claim of force majeure by Respondent. Respondent shall be deemed to have notice of any circumstances of which its contractors had or should have had notice.
78. If EPA determines that a delay in performance or anticipated delay of a requirement of this UAO is or was attributable to a force majeure, then the time period for performance of that requirement will be extended as deemed necessary by EPA. If EPA determines that the delay or anticipated delay has been or will be caused by a force majeure, then EPA will notify Respondent, in writing, of the length of the extension, if any, for performance of such obligations affected by the force majeure. Any such extensions shall not alter Respondent's obligation to perform or complete other tasks required by this UAO which are not directly affected by the force majeure.

### **XIX. RESERVATION OF RIGHTS**

79. Notwithstanding any other provisions of this UAO, the United States retains all of its authority to take, direct, or order any and all actions necessary to protect public health or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste or constituents of such wastes, on, at, or from the Site, including but not limited to the right to information gathering, inspection authorities and rights, and enforcement actions under RCRA, CERCLA, and any other applicable statutes or regulations. EPA reserves the right to bring an action against Respondent under any applicable law for recovery of all response costs, including oversight costs, and past costs incurred by EPA with respect to the site that have not been reimbursed by Respondent, any costs incurred in the event that EPA performs entire corrective action, or any part thereof.
80. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this UAO, including without limitation the assessment of penalties under Section 7003 of RCRA, 42 U.S.C. § 6973. This UAO shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, claims, and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States.
81. This UAO is not intended to be nor shall it be construed to be a permit. EPA's approval of any Work Plan and/or Sampling Plan does not constitute a warranty or representation that the Work Plan and/or Sampling Plan will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this UAO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.
82. Notwithstanding any other provision of this UAO, no action or decision by EPA pursuant to this UAO, including without limitation, decisions of the Regional Administrator, the Director of the Compliance Assurance and Enforcement Division, or any authorized representative of EPA, shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of a judicial action to enforce this UAO, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of this UAO.



Docket Number RCRA-06-2008-0907  
RCRA 7003 Unilateral Administrative Order  
Delfasco, Inc. (TXD988034328)

## **XX. OTHER CLAIMS**

83. By issuance of this UAO, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this UAO.
84. Nothing in this UAO shall constitute or be construed as satisfaction or a release of any claim, cause of action, or demand in law or equity against Respondent or any person, firm, partnership, subsidiary or corporation not a signatory to this UAO, for any liability it may have under RCRA, CERCLA, other statutes, or the common law, including, but not limited to, any claims of the United States for costs, damages, and interest under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

## XXI. INSURANCE

85. Prior to commencing the on-site Work under this UAO, Respondent shall secure, and shall maintain in force for the duration of this UAO and for 2 years after the completion of all activities required by this UAO, comprehensive general liability insurance with a limit of \$1 million dollars. Prior to commencement of the Work under this UAO, and annually thereafter on the anniversary of the Effective Date of this UAO, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. If Respondent demonstrates by evidence satisfactory to EPA that its contractors and subcontractors maintain insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by the contractors and subcontractors.
86. For the duration of this UAO, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and worker's compensation insurance for all persons performing the Work on behalf of Respondent, in furtherance of this UAO.
87. At least 7 days prior to commencing the Work under this UAO, Respondent shall certify to EPA that their contractors and subcontractors have obtained the required insurance.

## XXII. COST ESTIMATES AND FINANCIAL ASSURANCE

88. Cost Estimates. Unless otherwise directed in the UAO, within thirty (30) days after the Effective Date of this UAO Respondent shall submit to EPA a detailed written initial estimate, in current dollars, of the cost of hiring a third party to perform the Work described in Section VII (Work to be Performed). A third party is a party who: (i) is neither a parent nor a subsidiary of Respondent and (ii) does not share a common parent or subsidiary with Respondent. The initial cost estimate must account for the total costs of the work activities described in Section VII (Work to be Performed) for the entire period of this UAO, including any necessary long term costs, such as operation and maintenance costs, monitoring costs, and institutional controls. The cost estimate must not incorporate any salvage value that may be realized from the sale of wastes, facility structures or equipment, land or other assets associated with the Site.
89. Concurrent with the submission of any Work Plan(s) for additional work required under Section XXIII (Additional Work), Respondent shall submit revised detailed written estimate(s), in current dollars, of the cost of hiring a third party to perform the Work.
90. Respondent must annually adjust the cost estimate(s) for inflation within thirty (30) days after the close of Respondent's fiscal year until the Work required by this UAO is completed. In addition, Respondent must adjust the cost estimate if EPA determines that any additional work is required, pursuant to Section XXIII (Additional Work), or if any other conditions increase the cost of the Work to be performed under this UAO.
91. Assurances of Financial Responsibility for Completing the Work. In order to secure the completion of the Work in accordance with this UAO Respondent shall establish financial assurance in the form of a trust fund administered by a trustee who has the authority to act as a trustee under federal or state law and whose trust operations are regulated and examined by a U.S. federal or state agency and that is acceptable in all respects to the EPA. The trust agreement shall provide that the trustee shall make payments from the fund only for the costs of performing the Work required under this UAO, and only after EPA has advised the trustee that the Work has been performed in accordance with the requirements of the approved Work Plans. The trust agreement shall further provide that the trustee shall not refund to the grantor any amounts from the fund unless and until EPA has advised the trustee that the Work under this UAO has been successfully completed.
92. Respondent shall submit a draft trust agreement to EPA for review pursuant to Section VIII (EPA Review of Deliverables) within thirty (30) days after the Effective Date of this

Docket Number RCRA-06-2008-0907  
RCRA 7003 Unilateral Administrative Order  
Delfasco, Inc. (TXD988034328)

UAO, concurrently with Respondent's submission of the initial cost estimate required by Paragraph 88. The trust agreement shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion.

93. Within thirty (30) days after EPA's approval of both the initial cost estimate and the draft trust agreement, whichever date is later, Respondent shall establish a trust fund in an amount at least equal to the initial cost estimate approved by EPA.
94. Respondent shall submit an original copy of the trust agreement to:

Lorraine Dixon  
Assistant Region Counsel  
U.S. EPA Region 6  
1445 Ross Avenue  
Dallas, TX 75202-2733

95. Whenever the annually adjusted estimate for the cost of completing the remaining Work exceeds the amount of financial assurance already provided pursuant to this Section, Respondent shall, within thirty (30) days thereafter, increase the amount of the trust fund to cover such cost increase. In addition, in the event that EPA determines at any time that the financial assurances provided pursuant to this UAO are inadequate (including, without limitation, the trust agreement or the trustee), Respondent shall, within thirty (30) days after receipt of notice of EPA's determination, correct the inadequacy. Furthermore, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within thirty (30) days after receipt of such notification, Respondent shall increase the amount of the trust fund to cover such cost increase.
96. Respondent's inability to post financial assurance for completion of the Work shall in no way excuse performance of any other requirements of this UAO, including, without limitation, Respondent's obligation to complete the Work in strict accordance with the terms of this UAO.
97. Reduction of Amount of Financial Assurance. If Respondent believes that the estimated cost to complete the remaining Work has diminished below the amount covered by the existing financial assurance provided under this UAO, Respondent may, on any anniversary date of the Effective Date of this UAO, or at any other time agreed to by EPA and Respondent, submit a written proposal to EPA to reduce the amount of the financial assurance provided under this Section to the estimated cost of the remaining Work to be performed. The written proposal shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. The decision

Docket Number RCRA-06-2008-0907  
RCRA 7003 Unilateral Administrative Order  
Delfasco, Inc. (TXD988034328)

whether to approve a proposal to reduce the amount of financial assurance shall be within EPA's sole discretion and EPA shall notify Respondent of its decision regarding such a proposal in writing. Respondent may reduce the amount of the financial assurance only after receiving EPA's written decision and only in accordance with and to the extent permitted by such written decision.

98. Release of Financial Assurance. Respondent may submit a written request to the Director of the Compliance Assurance and Enforcement Division, EPA Region 6, that EPA release Respondent from the requirement to maintain financial assurance under this Section at such time as EPA has provided written notice, pursuant to Section XXIV (Termination and Satisfaction) that Respondent has demonstrated that all the terms of this Order have been addressed to the satisfaction of EPA. The Director of the Compliance Assurance and Enforcement Division shall notify both Respondent and the Trustee in writing that Respondent is released from all financial assurance obligations under this AOC.

Docket Number RCRA-06-2008-0907  
RCRA 7003 Unilateral Administrative Order  
Delfasco, Inc. (TXD988034328)

### **XXIII. ADDITIONAL WORK**

99. EPA may determine or Respondent may propose that certain tasks are necessary in addition to or in lieu of the tasks included in UAO when such additional work is necessary to meet the objectives set forth in Section I (Introduction). EPA may determine that Respondent shall perform the additional work and EPA will specify, in writing, the basis for its determination that the additional work is necessary. Within 5 days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work. Respondent shall submit for EPA approval a Work Plan for the additional work. Such Work Plan shall be submitted within 10 days of Respondent's receipt of EPA's determination that additional work is necessary, or according to an alternative schedule established by EPA. Upon approval, Respondent shall implement the Work Plan in accordance with the schedule and provisions contained therein. The Work Plan for any additional work shall be incorporated by reference into this UAO. This provision is subject to Respondent's right to invoke dispute resolution.

Docket Number RCRA-06-2008-0907  
RCRA 7003 Unilateral Administrative Order  
Delfasco, Inc. (TXD988034328)

#### **XXIV. TERMINATION AND SATISFACTION**

100. The provisions of this UAOC shall be deemed terminated and satisfied by Respondent upon written notice from EPA that Respondent has demonstrated that all of the terms of this UAO, including any additional work as may be performed pursuant to Section XXIII (Additional Work) have been addressed to the satisfaction of EPA. Termination of this UAO shall not terminate Respondent's obligation to comply with: Sections XIII (Sampling, Access, and Data Availability); Section XV (Record Retention); and XIX (Reservation of Rights) of this UAO.

Docket Number RCRA-06-2008-0907  
RCRA 7003 Unilateral Administrative Order  
Delfasco, Inc. (TXD988034328)

#### **XXV. SEVERABILITY**

101. If a court issues an order that invalidates any provision of this UAO or finds that Respondent has sufficient cause not to comply with one or more provisions of this UAO, Respondent shall remain bound to comply with all provisions of this UAO not invalidated or determined to be subject to a sufficient cause defense by the court's order.



Docket Number RCRA-06-2008-0907  
RCRA 7003 Unilateral Administrative Order  
Delfasco, Inc. (TXD988034328)

## **XXVI. EFFECTIVE DATE**

102. This Order shall become effective upon receipt of the UAO by Respondent.
103. Respondent may, within seven (7) days after the Effective Date of this UAO, request a conference with the EPA to discuss this UOA. If requested, the conference shall occur at the U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. This conference will be presided over by the Regional Judicial Officer (unless another on person has been designated). Requests for a conference shall be made by telephone followed by a written request confirmation mailed that day, by certified mail, returned receipt requested to Lorraine Dixon, Assistant Enforcement Counsel (6RC-EW), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. The request of a conference shall not alter the schedule or due date of deliverables required by this UAO.
104. The purpose and scope of this conference shall be limited to issues involving the implementation of the actions required by this UAO and the extent to which Respondents intend to comply with this UAO. This conference is not an evidentiary hearing, and does not constitute a challenge to this UAO. It does not give the Respondent a right to seek review of this UAO, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondents' request, the Respondent may appear in person, or by an attorney or other representative.
105. Within three (3) business days following the conference, the Regional Hearing Officer or designee shall prepare and sign a written summary of the proceeding. The summary shall address the significant arguments raised by the Respondents, recommend how the UAO should be modified, if at all, and contain the reasons for the revisions, if any. Based on a review of the administrative record, any probative information or argument made by the Respondent, and the recommendation of the Regional Hearing Officer or designee, the Regional Administrator may, upon specific written notice to the Respondent's, modify or revoke the UAO.
106. At any time, Respondent may submit additional documents or other materials to be included in the Administrative Record.

Docket Number RCRA-06-2008-0907  
RCRA 7003 Unilateral Administrative Order  
Delfasco, Inc. (TXD988034328)

**IT IS SO ORDERED.**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 6

Date: 7-2-08

By: 

John Blevins

Director

Compliance Assurance and Enforcement Division

U.S. Environmental Protection Agency, Region 6

1445 Ross Avenue

Dallas, TX 75202-2733

Docket Number RCRA-06-2008-0907  
RCRA 7003 Unilateral Administrative Order  
Delfasco, Inc. (TXD988034328)

**CERTIFICATE OF SERVICE**

I hereby certify that the original and one copy of the foregoing UNILATERAL ADMINISTRATIVE ORDER was filed with the Regional Hearing Clerk, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and that a true copy of the same was sent by Certified Mail,

Return Receipt Requested to:

Mr. Philip E. Kadlecsek, President  
Delfasco, Inc.  
733 W. Hurst Blvd.  
Hurst, TX 76053

\_\_\_\_\_  
Date

\_\_\_\_\_  
Lori Jackson  
Paralegal

Sent via email on Jul 2, 2008 to:  
Philip Kadlecsek and  
Jim Morris

